DOCUMENT RESUME

ED 373 378 CS 508 680

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TITLE Communication Apprehension Treatment: Issues in Ethics, Law, and Practice.
PUB DATE Nov 94
NOTE 22p.; Paper presented at the Annual Meeting of the Speech Communication Association (80th, New Orleans, LA, November 19-22, 1994).
PUB TYPE Speeches/Conference Papers (150) -- Viewpoints (Opinion/Position Papers, Essays, etc.) (120)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Communication Apprehension; *Ethics; Higher Education; Individual Development; *Legal Problems; *Standards; Student Development; Teacher Role; Teacher Student Relationship
IDENTIFIERS *Educational Issues

ABSTRACT

The efforts of communication scholars to reduce the apprehension or anxiety that the person feels about communication should be undertaken after considering the ethical, legal, and practical issues such efforts involve. The ethical question is whether or not an instructor has the obligation to intrude into a central feature of a person's life, particularly when the effects are unknown. Legal issues arise when communication scholars, in the name of research, teaching, or consulting, act as therapists. Scholars run the risk of criminal suit in communication apprehension (CA) treatment by violating any one of three standards: fraud, assault, and nonconsensual working with minors. The remaining possibility for criminal liability concerns malpractice and negligence. If a consultant fails to provide the desired or advertised improvement, then the plaintiff must prove by the preponderance of evidence that such a failure was the result of malpractice or negligence and that the malpractice or negligence causes a specific demonstrable harm. The goal of CA treatment should be the establishment of some preferred and accepted procedures that benefit the clients as well as the practitioner. However, establishing professional standards for competence in training and practice seem far off. When research establishes what constitutes effective and ineffective practices the justification for training and certification is made a reality. (Contains 19 references.) (RS)

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# Communication Apprehension Treatment:

# Issues in Ethics, Law, and Practice

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Paper presented at the
Communication Apprehension and Avoidance Commission
Speech Communcation Association Convention

New Orleans, Louisiana

November, 1994

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ABSTRACT

Communication Apprehension Treatment:

Issues in Ethics, Law, and Practice

This paper consider issues surrounding the ethical, legality, and practice of communication apprehension treatment. Communication scholars for some time have tried to improve the performance of students by reducing the apprehension or anxiety that the person feels about communication. The efforts at improvement represent potentially a fundamental change to the lifestyle and orientation of a person to family, friends, and employment. The efforts to change this should be undertaken after considering the ethical, legal, and practical issues such efforts involve.

Communication scholars have devoted a great deal of time and effort into assesssing, understanding, and remediating the impact of communication apprehension (for a large bibliography, in need of updating, see Payne & Richmond, 1984). The hundreds (if not thousands) of investigations into the impact of communication apprehension, reticence, anxiety, shyness, or any other similar name represents one of the longest sustained efforts in communcation research, dating back before 1940 (Dow, 1937; Knower, 1937).

A large portion of the research, more than 150 investigations has considered methods of reducing the impact of communication apprehension (Allen, 1987). Research into improving the effectiveness of such techniques is ongoing as is scholarship making these techniques available to instructors (Ayres & Hopf, 1993). This manuscript considers a variety of issues that deserve consideration when teachers or therapists undertake to reduce levels of communication apprehension. Such issues have receive some treatment in past manuscripts (Booth-Butterfield & Cottone, 1991; Allen & Hunt, 1993). This essay intends to expand and offer some unifying thoughts on the issues of ethics, law, and application that deserve consideration by persons working in this area.

## ETHICAL ISSUES

At first consideration, the decision to intervene may involve seemingly few ethical considerations. A college student entering a public speaking class may be identified as high in communication apprehension. The student is offered methods of reducing such apprehension to improve performance and reduce the level of apprehension. Even if no special program is undertaken to identify or treat the highly apprehensive student, the inclusion in some skills class (most often public speaking) has been demonstrated to reduce the level of communication apprehension

(Allen, Hunter, & Donohue, 1989). It should be noted, that the research illustrates the same effect for self-report, observer, and physiological measurement (Allen, 1989). The important aspect remains that to an observer the person appears less nervous and less anxious. This lessening of the perception of anxiety should be associated with the improvement in credibility and performance of the communicator.

The reduced anxiety as demonstrated by self-report measures should improve the willingness of a person to communicate with others. Normally, communication scholars operate with the assumption that increased willingness to communicate represents a desirable state. The arguments in favor of enpowering a person to communicate is served when apprehension becomes reduced as a factor in a person not communicating.

However, consider the issues within the context of a person's life made up of a web of social relationships. Communication apprehension effects and is sometimes effected by the web of interpersonal relationships for that person (Miller, 1984; Berquist, Bourhis, & Allen, 1992). If a person's life choices involving job, marital partner, and other relationships become based on or effected by the level of communication apprehension, then modification of the level of apprehension by an instructor changes a person's life. At the current time, little research exists considering the impact of such changes on a person's life. The longitudinal data on the impact of such changes on the quality of life is anedoctal and positive but not comprehensive and comparative. Without such data it is impossible to state authoritatively whether such changes are perceived positively or not.

The ethical question is whether or not an instructor has the obligation to intrude into a central feature of a person's life, particularly when the effects are unknown. The reduction of apprehension

may constitute a fundamental change in the relationships that a person has with others. A person may become vocal with a boss or significant other and the change in communication patterns could prove disruptive to that relationship by engaging in disclosure, conflict, or informational exchange that was not previously a part of the relationship.

Such considerations deserve research and careful exploration. However, at the current time little data exists about the nature of the such changes and therefore the decision constitutes an ethical rather than empirical issue. College education is fraught with risk. A student is exposed to ideas, ideas that challenge or threat what may constitute established orthodoxies. The key to remember is that a student chooses to engage in such behavior, a student chooses to take a course, to enter a CA treatment regimen. In a democratic state that practices a search for truth, the ability to permit students such a choice must exist. Until the consequences are known, the arguments exist merely as hypotheticals that warrant concern but should not form the basis for heavyhanded action by scholars.

The alternative outcome is that reduced apprehension may improve existing relationships by opening lines of communication. In addition, the ability to express one's self may permit a person a wider variety of actions than previously. The reduced level of apprehension should permit the person a wider variety of choices and therefore permit a sense of enpowerment. With choice comes the comcomitant risk of a negative or undesirable choice. Not all outcomes are positive, but a person should be free to pursue such choices.

## LEGAL ISSUES

Legal issues stem from articles considering the nature of issues surrounding the legal standing of programs designed to reduce apprehension

(Allen & Hunt, 1993; Booth-Butterfield & Cottone, 1991). The argument suggests that there exists possible violations of law when communication scholars in the name of research, teaching, or consulting act as therapists.

The need for ethical practices by person is something that exists within and in addition to the legal responsibilities a professional has to the community. The Allen and Hunt writings (1993) mostly mention possible legal issues and liability but provides some legal analysis with a few remedies or steps the communication professional might take for protection. This manuscript, seeks to expand the understanding of the legal issues involved, the authors (with the benefit of their own legal training and with outside advice) examine the issues involved in the treatment of communication apprehension (CA). The authors examine three contexts CA treatment operates within: (a) the classroom, (b) the laboratory, and (c) outside the college or university when the communication professional acts as a consultant.

In law, terminology is everything. In 1977, Missouri became the fiftieth state to enact a law regulating the practice of clinical psychology (Fischer, 1981). These laws grant an economic charter to a group of professional individuals establishing a basis for the standards and practices of the regulated industry. The regulatory practices must provide a set of licensing and review procedures that meet the requirements of due process (Fischer, 1981). Licensing and certification laws constitue an effort to protect the public from potential malpractice by the untrained. A distinction exists between the licensing of a profession and the certification of professionals within a practice. Licensing is a procedure that grants exclusive rights to practice a particular art. Only a licensed person may perform those actions and use

those titles permitted by the law. Certification, on the other hand, grants the use of titles and descriptions to those certified but does not restrict the practice to only those that are certified. Persons lacking certification may engage in the practice but cannot claim to be certified or use particular terminology. Often the distinction becomes blurred when certification and/or licensing statutes and procedures are combined.

It is possible to run the risk of criminal suit in CA treatment by violating any one of three standards: (a) fraud, (b) assault, and (c) nonconsenual working with minors. If a person makes a claim about the reduction technique and is unable to substantiate that claim, particularly in the context of selling a service, then fraud exists. However, this is avoided by simply limiting the claims made about the effect of reduction techniques. Assault charges would stem from the use of drugs, hypnosis, or some other invasive techniques that limited the freedom of an individual or was physically/psychologically intrusive to the patient. This would not occur with most skills training, systematic desensitization, visualization, or cognitive modification techniques. Laws protecting minors could be violated if the CA reduction techniques are used without parental consent. Generally, one would expect that criminal risk according to these standards (fraud, assault, minors) remain minimal. Prudent conduct would suggest that the requirements for violating these law constitute both ethical as well as legal infringements.

While it is possible to run afoul of other additional criminal laws, these criminal violations do not stem from use of CA reduction techniques per se, but rather from conduct that is not prudent. Persons offering CA reduction techniques should not make unsupported or guaranteed claims of successful treatment. The use of drugs, hypnosis, or other invasive

techniques involves skills requiring specialized training. The law prohibits counseling of minors without parental consent. The sanctions of these statutes could be avoided by not handling minors or by obtaining parental consent prior to using CA treatment.

Within the classroom and the laboratory there may exist a blanket exemption from the individual sanctions of the criminal law. If a person, particularly an employee of an educational institution, is, as part of their assigned and normal duties, using CA treatment then probably no infringement of the definition of what constitutes psychological practice exists. The key factor becomes the ability to prove that the actions occur as part of the employee's normal duties (teaching and experimentation). CA treatment conducted as part of a class, within the normal operation of the classroom, falls under that proviso. The nature of the relations regulated by law are between a patient/therapist. The classroom and laboratory involve fundamentally different relationships (student/teacher and subject/experimenter). Since the relationships are different, the ability to establish the grounds necessary for criminal prosecution is remote.

Research is a bit more troublesome, because although there exists an expectation that the faculty member conduct research, typically no mandate for a specific type of research exists. However, a faculty member can establish the expectation for CA research with appropriate documentation: a job description, a letter of application, a curriculum VITA, the presentation during the interview, and other records. This paper trail sets forth clear expectations that the person was hired and expected to conduct research on CA reduction. The result reduces the risk of criminal prosecution because the infringement on the practices of the licensed occupation does not exist. The person is not operating as a therapist but

rather an educator within an research setting. An educational research setting forms a relationship of experimenter/subject not therapist/patient and should therefore not be a problem.

Additionally, a review by the university's use of human subject's committee provides some additional protection. For the person conducting research as a university professor at a research institution, this activity is considered part of the job. The Human Subjects Committee's approval indicates university or college belief that there is no unwarranted possibility of harm to subjects. The review provides a formal indication that the research is part of his/her professional expected duties. In the classroom or laboratory, the professor's responsibilities would be subrogated to those of the university provided he/she functioned as a CA professional within a teaching or research responsibility (Allen & Hunt, 1993).

Finally, if no direct financial profit exists for the researchers it becomes difficult to argue that a legal problem exists for either the teacher or the researcher. The licensing laws intend to regulate and restrict a commercial practice. If there exists no profit or charge for the activity that practice fails to be included as part of a commercially regulated practice. This indicates that the practice of CA treatment by teachers or researchers is not regulated by psychological or counseling licensing boards. Since the relationship is not a client/patient relationship, the application of the statute is inappropriate.

Outside consulting provides some different issues. Profit is direct and exists for person conducting therapy as a consultant. The issue concerns whether or not such a practice falls within the purview of counseling law. If the CA treatment is for the reduction of public speaking anxiety and the consultant was hired as a communication

consultant, then the consultant does not violate the law. This assumes that the critical words or terminology in the law are not violated by the person undertaking the consulting. A recent advertisement in Spectra advertises for communication apprehension reduction information, the reality of such problems exists. As communication scholars offer services to corporations the need to make clear the limits and conditions of such arrangements.

One critical feature is that of the ability of the communication consultant to advertise and promote the services offered can be severely limited based on the laws dealing with psychological counseling in the state. Each jurisdiction can reserve terms for the exclusive use of certain occupations. The existence of advertising of such services is now a reality. The 1992 issues of Spectra reveal classified advertising of audiotapes for use that assist a student in reducing public speaking anxiety. The advertising of such material becomes not a theoretical possibility but a realized event with such advertising.

Additionally, the person must make certain that the nature of the treatment deals with specifically CA matters. For example, suppose a person says the reason for the individual's high level of public speaking anxiety is due to the fact they were sexually molested by a parent. At this point it would be a good practice to terminate the therapy because the issues dealt with by the consultant fall outside the domain of typical CA treatment expectations. The CA treatment is not designed to consider issues of child abuse, molestation, spousal abuse, and/or unethical behavior by others that are claimed to "cause" the high level of communication apprehension within the individual. One could continue CA therapy for the ends of CA reduction but should not deal with causation, that should be dealt with by a professional psychological counselor. The

admonition here may not be based on legal justification, it may be legal to continue treatment, however, the ethics of continuing treatment do appear problematic.

The best possibilities concern fraud, assault, or nonconsensual practice with minors. These possibilities can be reduced to almost nothing by the use of common sense measures and the utilization of standard CA reduction techniques. The remaining possibility for criminal liability concerns the possible infringement of terms by those consulting utilizing the wrong terminology in advertising themselves and/or their services.

There exists a distinction between malpractice and negligence. Malpractice is the negligence of a professional failing to observe proper established professional standards. For malpractice to exist there must exist prior standards for the profession that the professional failed to use during practice. Simple negligence deals with the failure of any individual to do what a reasonable, intelligent person would do to prevent harm. Clearly it would be difficult to argue for simple negligence because the basis of CA treatment is the expertise of the individual. As such, the rest of this section assumes that the basis of the civil suit would be a claim of malpractice, not simple negligence. However, as it will be noted later, the basis for a claim of malpractice is difficult to sustain given the lack of accepted professional standards.

The result of an alternative view of the relationship is that the standards of professional negligence may not be applicable for normal psychological practice. There may be a basis of a negligence suit but the application would be educational or research negligence rather than mental health negligence. This argument stems from the relationship between the person not being a therapist/patient but some other teacher/student or experimenter/subject relationship existing.

Currently there exist no accepted and established standards for CA treatment. The current research literature is divided and unclear about what constitutes "acceptable" standards. At the current time the authors are unaware of any existing guidelines or accepted and established professional standards for practice. This means that the entire basis of the claim for a malpractice suit does not exist. The current lack of professional standards prevents civil suits based on malpractice. Normal negligence would be difficult to sustain since the entire basis of CA treatment assumes that the therapist is not a normal person. The irony of the situation is that without clear professional standards, malpractice cannot be demonstrated and that because therapy is special, normal negligence standards would be most difficult to apply.

The most likely case involving malpractice would be a person being told they were "cured" and then undertaking some communication event and failing. The standards used by the courts take into consideration the nature of the risk, the forseeability and likelihood of injury when weighted against the professionals conduct (Leesfield, 1987). A plaintiff has to prove the failure was directly the result of the treatment. This seems unlikely. What happens is that a person remains unharmed by the therapy but not cured. The current procedures for evaluation indicate that the particular method of measurement is not tied to the effectiveness of a particular treatment (Allen, 1989). This means almost any method of evaluation would prove acceptable given the available evidence. There would only be harm if a treated person attempted some action and the failure caused some economic or emotional injury.

This setting creates conditions where the relationship is student/teacher not patient/doctor and this requires a different set of malpractice standards. The plaintiff must prove that the procedures

involved within the class constitute malpractice according to established standards and a direct harm resulted from the failure. This should prove difficult, particularly if a person has a poor grade and is told they are performing poorly. The possibility arises that if the person is told all is well and they are not doing well, then a successful suit is at least possible. However, this type of lawsuit is no different than suits for educational malpractice when teachers pass students who cannot read or write. As such, the legal responsibility for financial damages would not rest exclusively with the individual but rather also with the institution in some sort of subrogation.

Essentially, a research setting admits the possibility of failure. The administration of the university (in the guise of the Human Subjects Review Committee) passes judgment and argues for the acceptability of the procedure. The standard for research in CA treatment involve not the standards for treatment but rather the standards for experimentation and research. This means that the real source of problems stems from violation of research standards for using human subjects rather than CA treatment. Again, according to the AAUP standards, researchers should be insured against such suits which would remove much of the financial responsibility from the individual (AAUP, 1990).

If a consultant fails to provide the desired or adertised improvement, then the plaintiff must prove by the preponderance of evidence that such a failure was the result of malpractice or negligence and that the malpractice or negligence causes a specific demonstrable harm. This provides the plaintiff with a nearly impossible burden. Assuming that the person utilizes an established CA treatment technique, the ability to prove malpractice would be exceedingly difficult. The simple advice for the consultant is to stay within what is known and established. The

result of sticking to established protocols and procedures is to remove or limit the question of malpractice or negligence.

The plethora of research materials available in books and articles from SCA and other organizations permit the learning and implementation of acceptable techniques for CA reduction (Ayres & Hopf, 1989; Kelly, Duran, & Stewart, 1990; McCroskey, 1972). The result is that there should exist good reason for the practitioner to believe that an established form of CA reduction will achieve the desirable ends. This puts an interesting dilemma on the plaintiff: either there exist: (a) no standards and therefore no basis for a suit, or (b) standards to be followed and assuming they are followed no successful suit should be possible.

## ISSUES OF THE PRACTICE OF COMMUNICATION APPREHENSION TREATMENT

The ethical and legal standards for assessing the desirability and impact of CA treatment depends on the level of information available. The recent developments invovling meta-analysis demonstrate that there exists some important issues receiving attention using the technique (Allen, Hunter, & Donohue, 1989; Bourhis & Allen, 1992). These summaries begin to provide answers to the questions about the impact of techniques and changes in outcomes. Such questions will eventually permit the evaluation of particular techniques and suggest the most desirable methods of treatment for students and others.

The outcomes of research, when appropriately summarized, most avenues considered, and methodological issues answered provides the ability to give advice and take action. The earlier ethical issue asked the question of whether an instructor should intervene to change the attitude of a person towards communication. Embedded within the ethical question was an assumption that a lack of information existed on the outcome of such intervention. The lack of such information, rather than the abundance of

the information raised the ethical question.

Suppose research was available that consistently showed a positive impact on the quality of life for 50% of the persons involved in CA treatment two years later. Suppose the same research demonstrated that another 15% of persons demonstrate a negative change two years later in the quality of their lives. Further suppose, that after appropriate controls and questioning we find that the changes were related to changes in communication apprehension. Does a scholar simply argue for a three to one advantage and maintain current programs. While the program, on balance, is desirable, for some the outcome is not a failure to benefit but in fact harms the person. At this point there probably should be a warning for such research.

One of the authors was recently part of a university committee that approved an experiment in group therapy. At the time of consent a participant was informed that as a result of therapy the research demonstrate 2/3 of persons believed they have benefitted but that 9% of the persons undertaking the procedure believe they get worse as a result of the technique. At this point the person may choose to participate or not, but the choice is an informed choice based on available information. Without such information currently available on CA treatment, the impact, positive or negative, is unknown. The arguments remain hypthetical and ethical rather than empirical.

The current level of information permit some choices and those choices should be pursued, but the community should always be aware of alternative choices and assumptions of those choices. Communication scholars should operate within the law and consistent with a sense of professional ethics. Eventually the goal should be the establishment of some preferred and accepted procedures that benefit the clients as well as the

practitioner.

## NATIONAL STANDARDS AND PRACTICES

One aspect of the Booth-Butterfield and Cottone (1991) article was a call for a National Standards and Practices for training and ethics. The ultimate goal of such a commission, meeting, or document is to establish standards for those wishing to offer CA treatment. The lack of standards for CA treatment essentially reduces the possibility of successful lawsuits now. It would be the establishment of standards that conceivably provides the basis for lawsuits rather than the lack of such standards. It seems that such books such as Ayres and Hopf's, Coping with Speech Anxiety (1993) begin the long slow process of building a sense of consensus and synthesis necessary for the eventual establishment of such standards.

It is premature to consider establishing such a mandate or certification board. While CA treatment has significantly improved and continues to make strides, it is unclear what constitutes competent professional behavior. The key to meeting this standard is the precision necessary for legal use as well as ethical use. The findings and the procedures must be identified correctly and completely. For example, the kind of training necessary to offer CA reduction remains unclear. While it is premature to establish such standards, the time has come to discuss those standards and the evidence and knowledge necessary for such standards. One issue involves identifying what kinds of risk in CA treatment to the client/student/subject. What potential harm, if any, exists for harm to individuals involved in typical CA treatment programs?

Some rudimentary guidelines for ethical behavior in the treatment of CA could be established. These broad ethical guidelines would at this time constitute probably little more than a simple reaffirmation of the

purposes of CA treatment and the relationship between the scholar and the client/subject/student. Remember, these standards regulate ethical conduct rather than competent practice.

One issue that surrounds CA treatment is the context of the normal relationship an academician has as a consultant, experimenter, or teacher. Consider that simple skills training (attending a public speaking course) without any special CA treatment methods or curriculum that offers a reduction in CA. Research indicates that courses in public speaking reduce CA (Allen, Hunter, & Donohue, 1989). This would indicate that all public speaking courses may themselves constitute efforts at therapy. Does that mean that the guidelines must cover general classroom behavior as well as regulate the content of the undergraduate curriculum or just the deportment of the teacher in the classroom? This could be expanded to cover a lot of other forms of communication research and consulting.

The issues deserve some attention and discussion. But establishing professional standards for competence in training and practice seem far off. Issues regarding deportment of the therapist are ethical issues based on values and not dependent on research. To establish malpractice, standards for practice invoke the notion of competence and by their nature should be based on the available research. Research that demonstrates some procedures are ineffective (currently research demonstrate all methods are effective, Allen, Hunter, & Donohue, 1989) or that some methods of measurement are better than others (current research disputes this claim, Allen, 1989) must exist.

The real need is to improve the technology and methods for treatment and then develop accrediting and establish standards. However, the field should be forewarned, that establishment of standards creates the

standards for liability as well as arguments about unethical practice. To date there is no evidence of any harm or serious invasive intrusion by untrained persons offering CA treatment. This does not mean such events do not occur, only that such outcomes remain largely undocumented.

National standards and practices operate typically as a field grows in consensus about the agreement on such standards and the need for such information to be practiced. The concern of most scholars remains the maximization of benefits for the students and clients affected by the CA reduction techniques. Most scholars would willingly embrace standards when convinced that such practices protect and benefit those under going CA treatment.

## CONCLUSIONS

The very lack of national standards prevents the ability to successfully sue in the courts for malpractice in CA treatment. This does not mean that professionals should not establish standards for conduct and practice. The arguments for ethical standards made by Booth-Butterfield and Cottone (1991) offer some reasoning for the development of such standards. It is necessary and desirable for professionals to continue and maintain a dialog on such issues. From that dialog and eventual consensus the generation of ethical standards of conduct become inevitable and desirable. When research establishes what constitutes effective and ineffective practices the justification for training and certification is made a reality.

The search for improvement should take us along the paths considering how ethical, legal, and scientific thinking needs to be connected. The connection of sound (based on research), ethical (based on assumptions of choice and freedom), and legal (based on conformity to existing laws) should play a part in the thinking of CA reduction professionals. At the

current time we still fall short, as an area, in terms of the necessary information for such a solid connection to exist. The foundation, however, for the establishment of such a structure does exist and continues to be strenghthened. As long as we keep our minds and options open we should look forward to improvement.

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